

REPORT - PLANNING COMMISSION MEETING

January 22, 2004

February 12, 2004

Project Name and Number: AMUSEMENT OR GAME DEVICES AND ARCADES (PLN2004-00004)

Applicants: (1) Jimmy Lee d.b.a. Hyper Net; and (2) City of Fremont

Proposal: To consider a Zoning Text Amendment to allow amusement or game arcades less than 1,200 square feet in size in C-N Neighborhood Commercial Districts, subject to a Zoning Administrator Permit. Staff also proposes to modify definitions and special provisions (operational standards) applying to amusement or game devices and arcades in all districts.

The changes would affect Fremont Municipal Code Sections 4-6102, 5-1206, 8-2106.1, 8-2106.2, 8-21002, 8-21004, 8-21102, 8-21103, 8-21103.1, 8-21202, 8-21203, 8-21204, 8-21302, 8-21303, 8-21312, 8-21313, 8-21412, 8-21414, 8-21502, 8-21503.1, 8-21602, 8-21603 and 8-22130.5.

Recommended Action: Recommend to City Council

Location: Citywide

Agents of Applicants: (1) Jimmy Lee; and (2) City of Fremont Planning Director

Consultant(s): None

Environmental Review: Categorically exempt under Section 15303 of the *CEQA Guidelines* pertaining to new construction and conversion of small facilities

General Plan: Neighborhood Commercial; other commercial and industrial designations

Zoning: C-N Neighborhood Commercial District; other commercial and industrial districts

Public Hearing Notice: Public hearing notification is applicable. A public hearing notice, including a one-eighth (1/8) page display advertisement, was delivered to *The Argus* on January 5, 2004, and published on January 9, 2004. In addition, eight public hearing notices were mailed as a courtesy to interested parties.

Executive Summary: A private party has proposed that amusement or game arcades less than 1,200 square feet in size be allowed in C-N districts subject to a Zoning Administrator Permit. Staff supports the request and also recommends modifications to the definitions used in the ordinance and codification of a number of new requirements requested by the Police Department. This report responds to questions raised by the Planning Commission in reviewing this proposal.

Background and Previous Actions: The City adopted most of its current regulations for amusement devices and arcades in 1983.¹ The regulations:

- Increased from two to five the number of amusement devices (then mostly video games) allowed as an accessory use in certain types of establishments.
- Allowed this small number of devices to be located in several types of establishments, not just, as formerly, in eating places.
- Defined amusement arcade as a use consisting of six or more amusement devices.

¹Ordinance No. 1550

- Retained the requirement for a Conditional Use Permit or Zoning Administrator Permit for arcades in all the retail commercial and industrial districts in which they were allowed. Arcades continued not to be allowed in C-N Neighborhood Commercial Districts.
- Allowed arcades outside the C-B-D (Central Business District) only in conjunction with, and accessory to, some other type of business, such as a theater, bowling alley, skating rink, billiards establishment or sport or recreation club.
- At the recommendation of the Planning Commission, a requirement for a Conditional Use Permit was added for arcades in the C-B-D. Arcades in the C-B-D also came to be allowed only as accessory uses.
- Established criteria to be used for the evaluation of arcades.
- Established an annual fee for amusement devices to fund enforcement of the regulations.

In 2000, in conjunction with comprehensive new standards for Late Night and/or Amusement Uses the City adopted a graduated approach in which smaller arcades (less than 1,200 square feet in floor area) in the C-B-D as well as in C-C (Community Commercial) districts could be approved by the Zoning Administrator, reserving the full Conditional Use Permit requirement for larger arcades only.

Although establishments providing computers that may be used either for playing games or for other purposes were probably not contemplated when the original provisions were adopted for amusement devices and arcades, the Zoning Administrator has determined that computers in such establishments can satisfy the definition of amusement device, which is currently "any machine, device or video game intended to operate for the sole purpose of providing amusement upon insertion of a coin, slug or token in the machine, or by paying in advance of or after use....".²

In 2002, the Planning Commission approved PLN2003-00020, a Planned District Minor Amendment for an establishment on Ardenwood Boulevard that includes Fremont's first approved computer game center as well as private karaoke booths. Many of the conditions of approval for that use came about at the request of the Police Department.

Also in 2002, the current applicant, Hyper Net, submitted a Business Tax Application for an establishment, described as "computer retail and Internet services", in a C-N Neighborhood Commercial District. It came to the City's attention that the establishment is an Internet-based game center or arcade, which is not currently allowed in the C-N district. Community Preservation (code enforcement) staff has allowed the operation to remain open pending review of this Zoning Text Amendment and, if this is approved, of a Zoning Administrator Permit.

On January 22, 2004, the Planning Commission conducted a public hearing on this item. Fremont resident and property owner John Weed spoke and proposed the elimination of the existing annual enforcement fee on amusement devices for establishments with one to five devices. The Commission asked staff for an analysis of the impacts of this proposal and also for data on calls for police service at existing computer game centers. Further consideration of the matter was continued to February 12, 2004. The data the Commission asked staff to gather, and staff's analysis in response to the Commission's comments and requests, are included below under "Concerns About Existing Computer Game Centers" and in the "Fiscal Impacts" and "Police Calls for Service" sections towards the end of this report.

Project Description: The applicant proposes a Zoning Text Amendment to allow amusement or game arcades under 1,200 square feet in floor area in the C-N Neighborhood Commercial District subject to a Zoning Administrator Permit. Staff also proposes to (i) standardize nomenclature, (ii) modify the definition of amusement or game devices to clarify their application to Internet-and computer-based game centers, (iii) delete the requirement that arcades be allowed only as accessory uses in conjunction with certain other types of establishments, and (iv) codify new operational requirements that were first imposed on the Ardenwood game and entertainment center at the request of the Police Department. The proposed new regulations include prohibitions on loitering, minimum standards for lighting, and other measures to facilitate surveillance by law enforcement personnel. In some cases, arcades could be required to hire their own security personnel and/or to install video surveillance equipment.

² Fremont Municipal Code (FMC) Section 8-2106.2

Definition: Staff proposes to modify the definition of amusement device to clarify that it includes computer equipment that customers use to play Internet- or computer-based games. The changes proposed in the first sentence of the definition of amusement device are as follows:

"Amusement or game device" shall mean any machine, mechanical, electronic or similar device, including any computer or video game, intended for customers to use or operate for the sole purpose of providing amusement or playing games or interactive simulations, except for business purposes, and except as excluded below, either upon insertion of a coin, slug or token in the machine, or by paying in advance of or after use.

Additional proposed language will be discussed below, clarifying the conditions under which computers would be considered amusement or game devices.

Staff proposes then to add the following, which codifies current practice:

This does not include devices whose use is allowed for free after admission to an establishment, even if admission requires payment of a cover charge.

Staff proposes then to clarify the definition by expanding the list of devices specifically included and the list of devices specifically excluded from the definition. The expanded lists are not intended to change policy. Discussion of the various categories of devices follows. Note that the requirement for a use permit and most of the other regulations described in this report (except the annual fees) apply only to arcades, that is, to establishments with six or more amusement or game devices.

Vending machines: The ordinance has a specific exemption for vending machines or machines with "pay-off devices for the return of slugs, money, coins, checks, tokens or merchandise". Staff believes that this exemption would apply even when the machine dispenses merchandise (for instance, a gumball) in an entertaining manner (but not if it is part of a pinball machine). Similarly, a machine that crushes and reshapes the coin put into it and returns it to the purchaser is like a vending machine and not an amusement or game device.

Photo laminating devices (coin-operated devices that laminate photographs) are no longer common and staff proposes to strike the reference to them from the ordinance as unnecessary. Photo booths have become common, however, so a reference to the booths will be added. These uses are excluded from the definition of amusement device since they are similar to vending machines in providing a definite product for a fixed price. Change machines are also clearly not amusement or game devices.

Staff believes that "crane" games are not exempt. In these games, merchandise can be won only when the crane equipment that retrieves the merchandise is operated in a particularly skillful manner. This requirement for special skill to obtain a product distinguishes them from vending machines. New language, below, is proposed to clarify this distinction.

Billiards, shuffleboard and other tabletop games, bowling, darts, etc.: The City has always regulated billiard tables under the amusement device ordinance when money is charged for the tables' use. The same logic applies to foosball and similar games.

Subsequent to the Planning Commission hearing on January 22, 2004, and the public comments and the Commission's request for information on the annual enforcement fees, staff consulted further with the Revenue and Treasury Manager and looked further into policies in regard to the assessment of amusement device fees. Based on this work, staff now believes that bowling lanes have not been included under the definition of amusement or game devices. This also applies to games that are neither mechanical nor electronic in nature, such as shuffleboard, board games, backgammon, cribbage or card sets, horseshoes, darts and so forth. The proposed language above makes this clear.

Go-carts, mechanical bulls and other amusement rides: Miniature motorized or trolley vehicles (for instance, bumper cars), mechanical bulls or ponies, and other amusement rides for adults or children are implicitly included in the current definition. Clarifying language is proposed, below.

Health-monitoring and exercise equipment: Health (for example, blood pressure) monitoring machines are explicitly exempted under the ordinance. Physical exercise equipment such as treadmills and weight-lifting machinery has not been regulated under the amusement device ordinance either. Staff proposes to clarify that all such equipment is exempt.

Jukeboxes and other media players: Jukeboxes are specifically exempted. They typically make up an incidental part of the ambience of an establishment. Staff proposes to clarify that rental of a computer or other equipment for recording, downloading, uploading, editing or playing audio, still images or video is also exempt (except as part of an interactive experience or game). Use of such equipment is not in and of itself an amusement activity. Karaoke equipment, however, would not be included in this exemption, since karaoke equipment is used as the central focus of an entertainment activity that in and of itself can draw crowds to an establishment.

Adult arcades: "Adult-oriented" denotes establishments involving the display of videos, photographs or other images 30 percent or more of which emphasize nudity or sexual activity. Based on the rationale set out in the preceding paragraph, such an establishment would be considered an amusement or game arcade if and only if it contains devices that provide an interactive experience, not just display videos. Staff proposes to add language clarifying that any establishment with amusement or game devices satisfying the definition of adult-oriented not be allowed unless this is a specific part of the approval and subject to the regulations applicable to such uses. The exemption for peepshow devices in the existing arcade ordinance can be deleted since the new clarifying language proposed in this project would expressly exclude audio and video players from the amusement device ordinance. Such devices could, however, be regulated under the adult-oriented business ordinance.⁴

The State lottery: State law regulates the State lottery extensively and probably precludes the City from enforcing any additional regulations or fees of its own on lottery machines. Staff proposes to exempt lottery and similar State-regulated game devices from the amusement and game device ordinance.

Game equipment held or worn on the person: The Zoning Administrator has previously determined that equipment for laser tag (and by extension, paintball) does not constitute an amusement device. Proposed new language, below, will codify that determination.

Exceptions: Devices that would otherwise be subject to the ordinance are excluded under the following circumstances:

- When customers do not operate them, or, as described above, when customers do not pay for their use (even if they pay a cover charge).
- When located in a private place, such as in a guest room in a hotel
- When part of a traveling circus or carnival. Such devices are regulated under the carnival ordinance only.

New language, below, is proposed to clarify this.

Interpretation: As technology and marketing evolve, devices explicitly excluded from the definition of amusement device may come to be used in a manner that effectively makes them amusement devices. In such a case, the Zoning Administrator (or other approving agency) has the power to determine how to apply the ordinance based on the totality of the language in the definition.

The final proposed changes to the definition of amusement device are as follows:

(a) An amusement or game device may be is generally one that is operated for use as a game, contest or for amusement purposes only; and does not contain a pay-off device for the return of slugs, money, coins, checks, tokens or merchandise, except when merchandise is dispensed only upon an exercise of skill.

(b) This definition includes billiards tables; crane games; foosball; go-carts, mechanical bulls and other amusement rides; karaoke devices; pinball machines; video games; and computers used for amusement or games.

⁴ Fremont Municipal Code Sections 5-10100 through 5-11105, 8-2102, 8-21203, 8-21203.1, 8-21206, 8-22311, 8-22312 and 8-22313

(c) This definition excludes coin-operated vending machines, photo booths, laminating, peepshow devices, coin-operated health-monitoring machines, and game equipment held or worn on the person, and state lottery games, as well as jukeboxes and other non-game audio and video players.

Table 1. DEVICE TYPES INCLUDED AND EXCLUDED FROM AMUSEMENT DEVICE DEFINITION

Included in the Definition of Amusement Device	Excluded from the Definition of Amusement Device
<ul style="list-style-type: none"> • Billiards table • Computer used for playing games • “Crane” game (operated to win merchandise through an exercise of skill) • Foosball and similar tabletop games • Fortune-telling machine • Karaoke machine • Miniature vehicle or mechanical bull or other animal for adults or children • Pinball machine • Video game 	<ul style="list-style-type: none"> • Blood pressure or other health monitoring machine • Board game, backgammon, cribbage or card game • Bowling lane • Computer not used, or only incidentally used, for playing games • Darts • Exercise equipment, physical, such as treadmill, body-building equipment or climbing wall • Jukebox • Laser tag or paintball equipment • Lottery machine, California State • Shuffleboard table, tabletop football, foosball, darts or similar game • Vending machine

Computers: Since most computers can be used either for playing games or for other purposes, staff proposes to use the standard that a computer is an amusement device when it is used for amusement 30 percent or more of the time. This standard of what constitutes a significant portion of a use was taken from Ordinance No. 2264, cited above.

Staff does not expect arcade establishments (or City code enforcement staff) will need to track the different types of use of their public computers. Based on consultations with local game center operators, with copying or business centers, and with a selection of local hotels, most game establishments will have far more than 30% of their computer time devoted to games, and other types of establishments supporting business uses with computer rental will have far less than 30% of their time devoted to games. Local public libraries have policies that prohibit tracking how their computers are used, but staff believes there is no evidence that computers in libraries are used to any large extent for games. The proposed new language clarifying when computers would be considered amusement or game devices follows:

(d) Where it is feasible to determine what proportion of the time computers (or similar devices) are used for amusement or games, such devices shall be considered amusement or game devices when used for amusement or games at least thirty percent (30%) of the time that they are in use.

⁵ Ordinance No. 2264 or Fremont Municipal Code Section 8-2102

(e) In the absence of evidence to the contrary, computers as accessory uses in libraries, in business centers for hotel guests, and in principal business service (such as photocopying service) uses shall not be considered amusement or game devices. In no case shall a device in a private guest room in a hotel be considered an amusement or game device.

The changes proposed to the definition of amusement or game device may be seen in Section 5 of Exhibit "A".

Principal vs. Accessory Use: The Zoning Ordinance currently allows amusement or game devices and arcades only as accessory uses to another principal use. This requirement was adopted in 1983 with the rationale that the principal use would provide some monitoring of the devices. Staff now proposes to allow freestanding arcades for the following reasons:

1. New proposed operational requirements address the need for monitoring.
2. Uses involving amusement or game devices that have been proposed in recent years are typically more complex than the video game arcades of the 1980s and involve a mix of uses that are hard to categorize in advance. For instance, some arcade uses can be argued to constitute Amusement Parks or Membership Sports and Recreation Clubs (FMC Sec. 8-22130.5[b][1] "a" and "e") as well as arcades. This includes the applicant's use, which involves team game playing via the Internet and/or an internal network. Amusement Parks and Billiard and Pool Establishments include some amusement devices as an integral part of the use, but it is hard to see how they are significantly different just because they fall into more than one category.

Small numbers of amusement or game devices (up to five) would still be allowed as accessory uses, without any use permit being required. Staff proposes, however, to allow the devices in conjunction with any retail use, and to make minor modifications to the list of service uses to which the devices may be accessory to reflect the language of the last-published Standard Industrial Classification (S.I.C.) Manual. See Exhibit "A", Section 26.

Standards: As requested by the Police Department, staff proposes that the following requirements be imposed:

Age:

- A manager 18 years of age or older shall be on-site during business hours at all times. No employee shall be under 16 years of age.

Loitering:

- All persons waiting for service shall wait within the establishment. No exterior waiting or loitering shall be allowed. No waiting list shall be maintained that exceeds the seating capacity of the interior waiting area.
- "No Loitering" signs authorized by the City shall be posted at locations selected by the Police Department.

Lighting and Surveillance:

- Exterior lighting shall be maintained at a level of at least one foot-candle at any exterior public entry and in adjacent parking areas for 30 minutes after the establishment closes or until the last patron leaves the vicinity.
- Interior lighting shall be established and maintained using no less than forty watts per hundred square feet (0.4 W/ft²).
- Visibility shall be maintained through the establishment's front exterior windows, if any, whenever feasible. No blind, sign, poster or other matter or tinting on the window, nor any interior wall, shall block an unobstructed view of the interior of the establishment, except to the extent needed to block glare from the sun.

- Payment and providing change shall occur only at automated machines or at desks designated in the conditional use or zoning administrator permit.

Miscellaneous:

- The walls separating any arcade that provides audio or amplified sound from other tenants shall achieve a minimum sound transmission coefficient (STC) sound rating of 40-50 unless an acoustical study establishes other measures to be required.
- Adequate trash and recycling facilities shall be maintained within the establishment for the use of customers.
- A copy of the conditions of approval shall be kept on the premises and made available upon request to authorized enforcement personnel.

The following additional requirements, related to security and surveillance, have been imposed on arcades in the past at the request of the Police Department and may continue to be appropriate for arcades of a certain size under some circumstances:

- Adequate security personnel shall be provided and shall be responsible to prevent violations of law and to enforce the prohibitions on waiting outside and loitering and to ensure that all patrons leave the property within thirty (30) minutes of the establishment's closing.
 - The security personnel shall be licensed as required by state law and shall be uniformed in a manner to distinguish them clearly from local public law enforcement or other government personnel.
 - One or more persons, not to include the security guard, shall be responsible for admission to the establishment
- Automatic video surveillance equipment shall be installed and operated allowing the on-site manager to monitor and record activities throughout the establishment in real time. The recordings shall be kept for at least one month.

All the proposed requirements directly address the issues that have arisen with arcades in the past. Since arcades tend to be places where young people, especially young men, congregate, the proposed standards serve to mitigate nuisances associated with loitering, playing hooky, noise, litter and petty crime. See Exhibit "A", Section 26. Nothing in the proposed amendments would prevent the City from imposing additional conditions as may be necessary under particular circumstances to ensure compatibility with nearby land uses and to minimize impacts on public services.

Nomenclature: Staff proposes to standardize the nomenclature used in this regard in the Fremont Municipal Code. Although the Code clearly states that amusement devices may or may not be coin-operated and are regulated the same in either case, the Code frequently identifies the devices today as "coin-operated amusement devices". Staff proposes to delete the term "coin-operated". In addition, the Code inconsistently refers to arcades either as "amusement or video game arcades" or as "coin-operated amusement devices in excess of five". Staff proposes to refer to amusement devices consistently as "amusement or game devices" and arcades as "amusement or game arcades".

End Notes: Staff proposes to move the notes currently located at the end of Section 8-22130.5 to the end of Article 21.3, consistent with the practice elsewhere in the Zoning Ordinance. See Exhibit "A", last page.

Prohibited Uses: Language would be added clarifying that illegal gambling cannot be conducted in an amusement or game arcade and, as discussed above, that adult-oriented business activity would only be allowed when specifically authorized subject to the regulations applicable to such uses.

Grace Period: In its research on computer game centers, staff identified two such centers existing in Fremont that have not secured use permits in addition to the current applicant's center. There may be other establishments that owe fees for amusement or game devices. In order to avoid creating excessive hardships for any of these businesses, staff proposes a grace period. Existing arcade businesses (six or more amusement or game devices) would have until July 1, 2004 to apply for a use permit. Second, existing businesses with any number of game devices, but which have not paid annual fees for them, would have until June 30, 2005 to pay the fees covering the preceding 12 months. There would be no attempt to collect the amusement device fees from unregistered businesses that might otherwise be payable for previous periods.

Project Analysis:

- General Plan Conformance:** The current proposal would allow amusement or game arcades where the General Plan land use designation is Neighborhood Commercial. The proposed project is consistent with the Neighborhood Commercial General Plan designation because only arcades under 1,200 square feet in floor area would be allowed. Arcades at that scale are likelier to serve the surrounding residential neighborhood and less likely to have adverse impacts on the neighborhood.

The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Land Use Policy LU 2.24 Neighborhood commercial areas are smaller shopping areas which provide a variety of convenience goods and services to a surrounding neighborhood....

Land use Policy LU 2.23 All neighborhood-serving commercial uses are generally allowed ...

- Zoning Regulations:**

Location in C-N Districts: Currently arcades are allowed in all commercial and industrial districts except the C-O Administrative Office and C-N Neighborhood Commercial. Where allowed, they require a Conditional Use Permit, except for arcades up to 1,200 square feet in floor area in the Community Commercial and C-B-D Central Business Districts. In these latter situations, a Zoning Administrator Permit is required.

Table 2: AMUSEMENT AND GAME ARCADES BY DISTRICT	
District	Allowed?
C-O	Not allowed
C-N	Not allowed if <u>≥ 1,200 sq. ft.</u> ZAP if < 1,200 sq. ft.*
C-C	CUP if ≥ 1,200 sq. ft. ZAP if < 1,200 sq. ft.
C-B-D	CUP if ≥ 1,200 sq. ft. ZAP if < 1,200 sq. ft.
C-T	CUP
C-R	CUP
I-L	CUP
I-R	CUP
G-I	CUP

* Underscore represents proposed change

Legend:

CUP Conditional Use Permit Required
ZAP Zoning Administrator Permit Required

Staff believes that allowing small arcades in the C-N Neighborhood Commercial District subject to a Zoning Administrator Permit is consistent with the general scheme under which arcades are regulated currently. In

circumstances where arcades may be controversial or have adverse impacts on adjacent residential districts, staff could refer the proposal to the Planning Commission for consideration.

Industrial Moratorium: It should be noted that I-R and G-I districts are subject to a moratorium for one year beginning last November that prevents arcades and other assembly uses from being located in those districts. Although terminology changes are proposed in the attached ordinance in the event the moratorium is lifted or expires without a permanent prohibition, no policy change with regard to these uses in industrial districts is proposed at this time.

Provisions Applying to Amusement Devices Generally: The changes to the Zoning Ordinance proposed by staff incorporate requirements that the Police Department has requested based on police experience with amusement and game arcades. Staff believes that these requirements are appropriate and help ensure compatibility between amusement and game arcades and surrounding land uses.

More than one of the proposed regulations is intended to facilitate surveillance of arcades and their vicinities. Staff proposes minimum lighting levels in the parking lot adjacent to an arcade as well as within the arcade, and a conditional prohibition on window tinting, blinds or other conditions preventing visibility of an arcade's interior from outside. Realistically, however, there is a limit as to how much ambient light can be required in an environment in which computers of the current generation are to be operated, since glare adversely affects a computer operator's ability to see what is displayed on the monitor without eyestrain. That is why staff proposes "No blind, sign, poster or other matter or tinting on the window, nor any interior wall, shall block an unobstructed view of the interior of the establishment, *except to the extent needed to block glare from the sun*" (emphasis added). Staff believes it is possible to have adequate surveillance even in situations where some tinting or blinds may be required during hours when the sun is shining directly into a game center. Under the current proposal, individual permit approvals would regulate individual business establishments.

Concerns About Existing Computer Game Centers: Based on site visits to the applicant's computer game center and a similar existing game center in Fremont, there appear to be differences in the operation and management of the facilities. Staff believes that these observations support the primary objective of this current application, which is for small amusement and game arcades in C-N Neighborhood Commercial Districts to be permitted at the discretion of the Zoning Administrator. Both of the centers in question are designated Neighborhood Commercial, so action on the present or some identical application would be required to legalize either use. The observations also support the addition of new regulations, as staff has proposed, to ensure adequate surveillance of arcades, enhance their suitability as an environment for the groups most interested in them and minimize the creation of nuisances.

The current application is for a change in citywide policy to make arcades possible in C-N districts, and to add new standard regulations for such uses. Should this application be approved, the applicant will then be required to submit an application for a Zoning Administrator Permit. Issues with regard to a particular establishment should be addressed during the review of the Zoning Administrator Permit. At that time, notice will be given to owners and occupants of the subject site and properties within 300 feet, whether these properties are commercial, residential or other. Staff has the discretion to increase the radius of notification from 300 feet to some other distance, or to use additional means to notify interested parties. As described above, the Zoning Administrator can refer any Zoning Administrator Permit application to the Planning Commission for consideration, and generally would do so if the Commission requested it.

- **Applicable Fees:** Special fees are currently required for establishments with amusement or game devices. The City imposed the fees in 1983 as a means of recouping the City's costs required to enforce the regulations. As part of the current project, staff has not analyzed whether the current level of fees still recovers an adequate proportion of the City's costs. Staff proposes to leave that question to be addressed as the Fee Schedule is updated over time.

Application Fee: When no conditional use or zoning administrator permit is required, that is, for establishments with five devices or fewer, there is a one-time application fee of \$50.

Annual Enforcement Fee: Each establishment is required to pay a fee annually based on the number of devices. For establishments with five devices or fewer, the fee is \$25 per device, up to a maximum of \$100. The total annual enforcement fee is \$150 for establishments with six to ten devices, \$200 for establishments with eleven to twenty

devices and \$400 for establishments with more than twenty devices.

Transfer of Ownership Fee: There is also a \$10 fee for changes of ownership of establishments with amusement or game devices.

Development Impact Fees: In addition to the special fees for amusement or game devices, arcades involving new construction or a change of use owe Traffic, Capital Facilities and Fire Fees at the retail rate.

- **Fiscal Impacts:** City staff has begun collecting, and is still collecting, data regarding the amusement device fees. In order to allow the Planning Commission to consider this proposal tonight, City staff will report back to the Commission before finalizing the report to the City Council recommending this item. Any changes to the fees will be included in the annual update of City fees that will occur in the spring.
- **Calls for Police Service:** The Fremont Police Department reported that calls for service associated with computer game centers (which are the only type of arcade currently known to be located in Fremont) range from 0 to 4 per year per center, mostly to do with allegations of smoking or sales of marijuana and sometimes burglary, theft or receipt of stolen property. A report of a beating was made in connection with one establishment. The Newark Police Department reported that a computer game center in Newark, generated 11 calls for service in 2003, of which 6 related to possible burglary attempts and 3 to pedestrian stops, with 1 disturbance of the peace and 1 assault. Police reported that it would be difficult to track calls for service associated with amusement or game devices located in establishments such as bowling alleys, pizza parlors and bars, although such establishments do generate a number of calls for police service.

Fremont Police indicate that, while there may be disagreement over the desirability of some game centers as an environment for children, calls for service generated by computer game centers or arcades in general are not out of proportion to those generated by other establishments, and are actually related more closely to the amount of customer traffic.

Environmental Analysis: This project is exempt from review under the California Environmental Quality Act (CEQA) under Section 15303 of the *CEQA Guidelines* (Class 3) pertaining to New Construction or Conversion of Small Structures. Besides imposing additional operational standards on amusement arcades, the only substantive effect of the proposed project on the environment would be to allow amusement arcades not exceeding 1,200 square feet in floor area to locate in C-N Neighborhood Commercial Districts.

Outreach: Staff made field visits to most of the existing Fremont businesses that had been identified as computer game centers, as well as some such centers outside Fremont, and discussed their business operations and this project with the on-site managers. Staff also sent a notice in November to all the computer game centers, some with use permits and some without. The notice described the existing ordinance and fees and the proposed ordinance changes and invited the owners to a meeting to discuss it.

In the development of this ordinance, staff has also consulted with businesses and institutions intended to be exempt from this ordinance, namely public libraries, photocopying centers and several hotels. Notice of the Planning Commission hearing was also sent to all interested parties, along with copies of the staff report and proposed ordinance upon request.

Response from Agencies and Organizations: Staff has not received any expressions of concern from any public agencies or organizations over the proposed project.

Enclosures: Hyper Net Project Description
Planning Commission Report and Minutes of January 22, 2004
Memorandum from Commissioner Lydon dated January 25, 2004

Exhibits: Exhibit "A" (Zoning Text Amendment)

Recommended Actions:

1. Hold public hearing.
2. Find PLN2004-0004 is categorically exempt from review under the California Environmental Quality Act per Section 15303 of the *CEQA Guidelines* (Class 3) pertaining to new construction and conversion of small facilities.
3. Find PLN2004-00004 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated in the staff report.
4. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment PLN2004-00004 in order to accommodate the needs of users of computer game centers and other amusement arcades while enhancing their suitability as an environment for young people and mitigating their impacts of on surrounding uses.
5. Recommend PLN2004-00004 to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).
6. Recommend to the City Council adoption of a grace period giving existing arcade businesses until July 1, 2004 to apply for a use permit.

EXHIBIT "A"

Zoning Text Amendment

AMUSEMENT OR GAME DEVICES AND ARCADES (PLN2004-0004)

Section 1:

Section 4-6102 (Definitions) of Chapter 6 (Smoking Ordinance) of Title IV (Sanitation and Health) of the Fremont Municipal Code is amended to read as follows:

Sec. 4-6102. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

Bar means an establishment ~~which is~~ devoted to the serving of alcoholic beverages, with a type 42, 48 or 62 license from the California Department of Alcoholic Beverage Control, in which the service of food and provision of billiards and other coin-operated amusement or game devices is only incidental to the consumption of such beverages.

Section 2:

Subsection (15) of subsection (a) of Section 4-6102 (Definitions) of Chapter 6 (Smoking Ordinance) of Title IV (Sanitation and Health) of the Fremont Municipal Code is amended to read as follows:

- (15) Billiard halls, amusement or game arcades and similar places of amusement and recreation.

Section 3:

Section 5-1206 (Recreation and entertainment) of Article 2 (Business Tax Rates and Measures) of Chapter 1 (Business Taxes) of Title V (Businesses, Professions and Trades) of the Fremont Municipal Code is amended to read as follows:

Sec. 5-1206. Recreation and entertainment.

- (a) Every person conducting, carrying on or managing any business consisting of entertainment, recreation or amusement shall pay an annual business tax of one dollar and fifty cents for each one thousand dollars of gross receipts. This classification includes but is not limited to: Archery ranges/instructions, bowling alleys, firearm shooting ranges, golf courses/instruction, ranges, indoor and outdoor motion picture theaters, pool and billiard halls, rental animals for recreation riding, skating rinks, sporting events, swimming pools, theaters at which live entertainment is presented, vehicle courses/racing, ~~video~~ amusement or game arcades.

Section 4:

Section 8-2106.1 (Amusement or video game arcade) of Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2106.1. Amusement or ~~video~~ game arcade.

"Amusement or ~~video~~ game arcade" shall mean any premise where six or more amusement or game devices are operated.

Section 5:

Section 8-2106.2 (Amusement device) of Article 1 (Definitions) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2106.2. Amusement or game device.

"Amusement or game device" shall mean any ~~machine, mechanical, electronic or similar device, including any computer or video game,~~ intended for customers to use or operate for the ~~sole purpose of providing amusement or playing games or interactive simulations, except for business purposes, and except as excluded below, either upon insertion of a coin, slug or token in the machine, or by paying in advance of or after use. This does not include devices whose use is allowed for free after admission to an establishment, even if admission requires payment of a cover charge.~~

- (a) An amusement or game device ~~may be~~ is generally one that is operated for use as a game, contest or for amusement purposes only; and does not contain a pay-off device for the return of ~~slugs, money, coins, checks, tokens or merchandise, except when the merchandise is dispensed only upon an exercise of skill.~~
- (b) This definition includes billiards tables; crane games; go-carts, mechanical bulls and other amusement rides; karaoke devices; pinball machines; video games; and computers used for amusement or games.
- (c) This definition excludes ~~coin-operated~~ vending machines, photo booths, ~~laminating, peepshow devices, coin-operated~~ health-monitoring machines, ~~and game equipment worn on the person, and state lottery games, as well as jukeboxes and non-game audio and video players.~~
- (d) Where it is feasible to determine what proportion of the time computers (or similar devices) are used for amusement or games, such devices shall be considered amusement or game devices when used for amusement or games at least thirty percent (30%) of the time that they are in use.
- (e) In the absence of evidence to the contrary, computers as accessory uses in libraries, in business centers for hotel guests, and in principal business service (such as photocopying service) uses shall not be considered amusement or game devices. In no case shall a device in a private guest room in a hotel be considered an amusement or game device.

Section 6:

Subsection (b) of Section 8-21002 (Accessory uses) of Article 10 (C-N Neighborhood Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (b) ~~The operation of o~~One to five coin-operated amusement or game devices^{1,3} ~~on premises wherein another principal use operates as described in Article 21.3 of this chapter.~~

Section 7:

Subsection (b) of Section 8-21004 (Zoning administrator permitted uses) of Article 10 (C-N Neighborhood Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended with the addition of a new subsection (e) to read as follows:

(e) Amusement or game arcade^{1,3} under one thousand two hundred square feet (1,200 sq. ft.) in size.

Section 8:

Subsection (e) of Section 8-21102 (Accessory uses) of Article 11 (C-C Community Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(e) ~~The operation of o~~One to five coin-operated amusement or game devices^{1,23} on premises, wherein another principal use operates as described in Article 21.3 of this chapter.

Section 9:

Subsection (y) of Section 8-21103 (Conditional uses: Planning commission as reviewing agency) of Article 11 (C-C Community Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(y) ~~Amusement or video game arcade^{1,3,4} if over~~ Amusement or video game arcade^{1,3,4} if over one thousand two hundred square feet (1,200 sq. ft.) in size or larger.

Section 10:

Subsection (b) of Section 8-21103.1 (Zoning administrator uses) of Article 11 (C-C Community Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(b) ~~Coin-operated a~~Amusement or game arcade^{1,3,4} devices^{1,2} in excess of five, subject to regulations set forth in Article 21.3 of this chapter if less than one thousand two hundred square feet (1,200 sq. ft.) in size.

Section 11:

Subsection (c) of Section 8-21202 (Accessory uses) of Article 12 (C-B-D Central Business District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(c) ~~The operation of o~~One to five coin-operated amusement or game devices^{1,3} on premises wherein another principal use operates as described in Article 21.3 of this chapter.

Section 12:

Subsection (j) of Section 8-21203 (Conditional uses: Planning commission as reviewing agency) of Article 12 (C-B-D Central Business District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is deleted.

Section 13:

Subsection (q) of Section 8-21203 (Conditional uses: Planning commission as reviewing agency) of Article 12 (C-B-D Central Business District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (q) Amusement or ~~video~~ game arcade^{1,3,4} one thousand two hundred square feet (1,200 sq. ft.) in size or greater.

Section 14:

Subsection (k) of Section 8-21204 (Zoning administrator uses) of Article 12 (C-B-D Central Business District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (k) Amusement or ~~video~~ game arcade^{1,3} if less than one thousand two hundred square feet (1,200 sq. ft.) in size.

Section 15:

The notes following Section 8-21207 (Other regulations of this chapter which are, or may be, applicable) at the end of Article 12 (C-B-D Central Business District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code are amended with the addition of a note to read as follows:

⁴Requires a public hearing; see Article 25.

Section 16:

Subsection (b) of Section 8-21302 (Accessory uses) of Article 13 (C-T Thoroughfare Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (b) ~~The operation of one to five coin-operated amusement or game devices^{1,3} wherein another principal use operates as described in Article 21.3 of this chapter.~~

Section 17:

Subsection (c) of Section 8-21303 (Conditional uses: Planning commission as reviewing agency) of Article 13 (C-T Thoroughfare Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (c) ~~Coin-operated~~ Amusement or game arcade.^{1,3,4} ~~devices^{1,3} in excess of five, subject to regulations set forth in Article 21.3 of this chapter.~~

Section 18:

Subsection (e) of Section 8-21312 (Accessory uses) of Article 13.1 (C-R Regional Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (e) ~~The operation of~~ One to five coin-operated amusement or game devices^{1,3}, ~~wherein another principal use operates as described in Article 21.3 of this chapter.~~

Section 19:

Subsection (c) of Section 8-21313 (Conditional uses: Planning commission as reviewing agency) of Article 13.1 (C-R Regional Commercial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (c) ~~Coin-operated~~ Amusement or game arcade.^{1,3,4} ~~devices^{1,4} in excess of five, subject to regulations set forth in Article 21.3 of this chapter.~~

Section 20:

Subsection (d) of Section 8-21412 (Accessory uses) of Article 14.1 (I-L Light Industrial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (d) ~~The operation of~~ One to five coin-operated amusement or game devices^{1,3}, ~~wherein another principal use operates as described in Article 21.3 of this chapter.~~

Section 21:

Subsection (m) of Section 8-21414 (Conditional uses: Planning commission as reviewing agency) of Article 14.1 (I-L Light Industrial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (m) Amusement or ~~video~~ game arcade;^{1,3,4}

Section 22:

Subsection (d) of Section 8-21502 (Accessory uses) of Article 15 (I-R Restricted Industrial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (d) ~~The operation of one to five coin-operated amusement or game devices^{1,3} wherein another principal use operates as described in Article 21.3 of this chapter.~~

Section 23:

Subsection (g) of Section 8-21503.1 (Conditional uses: Planning commission as reviewing agency) of Article 15 (I-R Restricted Industrial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (g) Amusement or ~~video~~ game arcade;^{1,3,4}

Section 24:

Subsection (d) of Section 8-21602 (Accessory uses) of Article 16 (G-I General Industrial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (d) ~~The operation of one to five coin-operated amusement or game devices^{1,3} wherein another principal use operates as described in Article 21.3 of this chapter.~~

Section 25:

Subsection (p) of Section 8-21603 (Conditional uses: Planning commission as reviewing agency) of Article 16 (G-I General Industrial District) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (p) Amusement or ~~video~~ game arcade.^{1,3,4}

Section 26:

Section 8-22130.5 (Amusement device) of Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning of the Fremont Municipal Code) is amended to read as follows:

Sec. 8-22130.5. Amusement or game devices and arcades.

(a) Restricted or prohibited activities: No amusement or game device shall accommodate:

- (1) Gambling prohibited under chapter 6 (disorderly conduct) of title III (public safety, welfare and morals) of this code, or under any other applicable law, or
- (2) Adult-oriented business activities as defined in section 8-2102 of this code, unless specifically authorized under the provisions of this code applicable to adult-oriented businesses.

(b) Accessory use. The operation of one to five ~~coin-operated~~ amusement or game devices shall be allowed as an accessory use in conjunction with the following principal uses in those districts in which they are expressly allowed in this code:

(1) ~~Retail:~~ Any allowed retail² use:

- a. ~~Bicycle shops;~~²
- b. ~~Candy, nut and confectionery stores;~~²
- c. ~~Drugs and proprietary stores;~~²
- d. ~~Eating and drinking places;~~²
- e. ~~Grocery stores, including convenience stores;~~²
- f. ~~Hobby, toy and game shops;~~²
- g. ~~Radio, TV, music stores and computer stores (new and used).~~²

(2) ~~Services~~ Services² as follows:

- a. Amusement and recreation services;²
- b. Beauty shops and barber shops;²
- c. Coin-operated laundries and dry cleaning;²
- d. ~~Health clubs and spas;~~²
- e. Hotels, and motels and tourist courts;²
- f. Motion picture and theatres theaters;²
- g. Organization hotels and lodging houses, on membership basis.²
- g. Physical fitness facilities;²

(c) (b) Amusement or game arcade.

- (1) ~~The operation of amusement devices in excess of five shall, where subject to a zoning administrator permit or planning commission conditional use permit, be accessory to the following principal use(s) and shall be subject to the regulations of Article 25 of this chapter:~~
- ~~a. Amusement parks;²~~
 - ~~b. Bowling alleys, billiard and pool establishments;²~~
 - ~~c. Commercial sports;²~~
 - ~~d. Eating and drinking places;²~~
 - ~~e. Membership sports and recreation clubs, including nonmembership tennis clubs;²~~
 - ~~f. Motion picture theatres;²~~
 - ~~g. Public golf courses, including miniature golf courses;²~~
 - ~~h. Skating rinks;²~~
 - ~~i. Any other retail or service use which the zoning administrator finds is similar in nature, function and operation as the above uses.~~

- (2) (1) Criteria for evaluation of amusement or game arcade. The following criteria shall be used in evaluating an application for a ~~planning commission conditional~~ use permit or zoning administrator permit for an amusement or game arcade ~~pursuant to this section:~~

- a. Compatibility of ~~amusement the~~ arcade to existing and proposed developments within the area;
- b. Suitability of location in terms of access, circulation and parking;
- c. Proximity to schools, religious facilities ~~churches~~, residential districts and other uses;
- d. Proposed hours of operation;
- e. Adequacy of adult supervision;
- f. Proposed number of amusement devices in relation to the gross floor area of the principal use;
- g. Potential for increased enforcement and police ~~related~~ response.

(2) Standard requirements. Amusement or game arcades shall comply with the following requirements:

- a. A manager 18 years of age or older shall be on-site during business hours at all times. No employee shall be under 16 years of age.
- b. All persons waiting for service shall wait within the establishment. No exterior waiting or loitering shall be allowed. No waiting list shall be maintained that exceeds the seating capacity of the interior waiting area.
- c. "No loitering" signs authorized by the city shall be posted at locations selected by the police department.
- d. Exterior lighting shall be maintained at a level of at least one foot-candle at any exterior public entry and in adjacent parking areas for thirty (30) minutes after the establishment closes or until the last patron leaves the vicinity, whichever comes first.
- e. Interior lighting shall be established and maintained using no less than forty watts per hundred square feet (0.4 W/ft²).

- f. Visibility shall be maintained, wherever feasible, through the establishment's front exterior windows, if any. No blind, sign, poster or other matter or tinting on the window, nor any interior wall, shall block an unobstructed view of the interior of the establishment, except when and where required to mitigate glare from sunlight.
- g. Payment and providing change shall occur only at automated machines or at desks designated on the conditional use or zoning administrator permit.
- h. The walls separating an arcade providing audio or amplified sound from other tenants shall have a minimum sound transmission coefficient (STC) of forty to fifty (40-50), unless as a result of an acoustical study other measures are indicated .
- i. Adequate trash and recycling facilities shall be maintained within the establishment for the use of customers.
- j. A copy of the conditions of approval shall be kept on the premises and made available upon request to zoning or building code enforcement, building inspection, revenue or police personnel authorized by the city and to law enforcement personnel from other agencies having jurisdiction.

(3) Additional requirements that may be imposed. Where appropriate, the approving agency may impose either or both of the following additional conditions of approval:

- a. The arcade shall provide security personnel, who shall be responsible to prevent violations of law, to enforce the prohibitions on waiting outside and loitering and to ensure that all patrons leave the property within thirty (30) minutes of the establishment's closing.
 - (i) Any such security personnel shall be licensed as required by state law and shall be uniformed in a manner to distinguish them clearly from local public law enforcement or other government personnel.
 - (ii) One or more persons not to include the security personnel shall be responsible for admission to the establishment.
- b. Automatic video surveillance equipment shall be installed and operated allowing the on-site manager to monitor and record activities throughout the establishment in real time. The recordings shall be kept for at least one month.
- c. Nothing in this section shall prevent the approving agency from imposing additional conditions as may be appropriate.

~~(c) (d) Coin-operated~~ Amusement or game device fees. The city shall charge aAn annual fee, based on the current fee schedule as adopted by city council, for the amusement device shall be charged for all amusement or game devices to cover the municipal its costs of for administration, policing and enforcement attributable to game of the machines devices and of these regulations. The city council shall establish the fee in the fee schedule annual fee for the amusement device shall be administered by and the revenue and taxation department division shall administer the fee.

Section 27:

The notes following Section 8-22130.5 (Amusement device) of Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning of the Fremont Municipal Code are deleted as follows:

~~[Applicable Notes]~~

~~¹This term is defined in Article 1.~~

~~²Term is elaborated on in Standard Industrial Classification Manual.¹~~

~~³The special regulations of Article 21.3 apply to this use.~~

~~⁴Requires a public hearing; see Article 25.~~

Section 28:

The notes following Section 8-22165 (Wind energy conversion systems) at the end of Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code are amended to read as follows:

[Applicable Notes]

¹This term is defined in Article 1.

²Term is elaborated on in Standard Industrial Classification Manual.¹

³The special regulations of Article 21.3 apply to this use.

⁴Requires a public hearing; see Article 25.